IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1468 OF 2005

Shankar Bhagwan Kale & Ors. ..Appellants.

V/s.

Dadasaheb Ganpat Naikwadi & Anr. ..Respondents.

Miss. Nayna Thatte for appellants.

Mr.R.S.Kate for respondent No.1 and 2.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 14, 2006.

P.C. :

1. Heard counsel for the parties.

2. I see no reason to interfere in this second appeal which is directed against concurrent finding of fact reached by the two Courts below. The argument of the appellant that both the Courts below have found that plaintiffs were exclusive owner of the land admeasuring 1 H. 94 R out of Gat No.409/18. Yet while granting injunction in favour of the plaintiffs and against the defendants the Courts below have granted injunction in respect of the suit land admeasuring 6 H. 47 R. The argument seems to be attractive, but it clearly overlooks the concurrent findings of the two Courts below that the

suit land admeasuring 6 H. 53 R are in their possession since the time of their father on the date of filing of the suit. On these findings, injunction granted by the Courts below in respect of the land admeasuring 6 H 47 R cannot be questioned.

3. Counsel for the appellants would then rely on the order passed by the Sub-Divisional Officer, Baramati dated 27th February, 1989 to contend that the plaintiffs took advantage of the allocation made by the Sub-Divisional Officer were encroaching upon this property belonging to the appellants/defendants. This submission need not detain this court. Property in possession of the appellants/defendants was not subject matter of the suit. If the appellants are aggrieved by the purported encroachment as alleged by the appellanton the property belonging to the defendants, it will be open to the appellants to take recourse to such remedy as may be permissible in law. That grievance however, cannot be the basis to entertain this second appeal, which is directed against the concurrent findings of fact. As no substantial question of law arises, dismissed.